IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR

:JUDGMENT:

M/s.Shri Ram Oil Extractions Ltd. **Vs.** **The RFC & ors.**

D. B. Civil Special Appeal (W) No.480/2005 under Section 18 of the Rajasthan High Court Ordinance, 1949 against the order dated 4.5.2005 passed in S. B. Civil Writ Petition No.1990/2002.

Date of Judgment ::: December 19, 2006

PRESENT

HON'BLE JUSTICE MRS. GYAN SUDHA MISRA
HON'BLE JUSTICE DR. VINEET KOTHARI

Mr. R.K. Salecha, for the appellant.

Mr. A.K. Sharma]
Mr. Virendra Lodha], for the respondents.

By the Court:

This appeal has been preferred against the order of the learned Single Judge dated 4.5.2005 by which the writ petition had been disposed of directing the respondent-RFC to issue fresh settlement of account and it was further observed that in case the petitioner/ appellant herein deposits the amount as shown in the fresh statement of account prepared by the RFC within a period of 15 days thereafter, the RFC was directed to hand-over the possession of the factory-premises, failing

which, the respondent-RFC was granted liberty to proceed further and the interim order granted earlier on 22.3.2002 in favour of the appellant was ordered to be vacated.

The appellant preferred an appeal before this Court contending that the appellant although had been advanced a loan of Rs.31,00,000/-, he had already deposited more than Rs.45,00,000/-, which should satisfy the loan amount as also the interest.

The matter was earlier heard by a coordinate Division Bench and an order was passed on 27.10.2005 in the appeal that a Chartered Accountant be appointed for calculating the dues towards the RFC and the Chartered Accountant had been directed to calculate the outstanding amount as per the terms and conditions of the loan agreement till date, i.e. 27.10.2005 and a copy of the result of the calculation was ordered to be submitted to the RFC and to the appellant also. The Chartered Accountant, M/s. Agarwal Sanjeev and Company thereafter submitted the report and recorded after taking into account the payments made by the appellant with the

respondent-RFC and after scrutiny of the amount, which had been paid towards the principal amount and towards interest, it was contended that a sum of Rs.98,76,010/- is outstanding amount which is to be paid by the appellant to the RFC. The appellant thereafter also paid the entire outstanding amount to the RFC which was Rs.99,11,154/- and thus the entire amount came to be satisfied and the factory premise was also handed back. Under the aforesaid circumstance, this appeal strictly should be treated as infructous since the controversy between the parties stands settled. But, the counsel for the appellant has prayed that although the Chartered Accountant had calculated the outstanding dues as Rs.98,79,010/-, the said amount being treated to be outstanding to the RFC as against the principal amount of Rs.31,00,000/- is extremely excessive and exorbitant and, therefore, liberty be left to him to move the civil court for contesting whether the amount paid by the appellant to the respondent-RFC can be treated as the correct amount outstanding to the RFC. This claim made by the appellant obviously cannot be decided in the appeal as this is purely a question of mathematical calculation to be looked into by the court of fact. We also do not find

fault with the action of the appellant-industry in the sense that it had to pay the outstanding amount calculated by the Chartered Accountant in order to save his unit and, therefore, if he had to pay this amount in order save his industry from being taken over by the RFC and also to save it from its auction, the said action do not preclude the appellant from moving the court of competent jurisdiction to contest as to whether the amount calculated by the Chartered Accountant was correct or not. Therefore, the liberty is left to the appellant to move the court of competent jurisdiction for accurate calculation of the amount.

With the aforesaid liberty, the appeal stands dismissed. All the documents pertaining to the assets of the appellant-industry be handed over to the appellant-industry.

[**Dr. Vineet Kothari**],**J.** [**Gyan Sudha Misra**],**J.**

/skm/